

## National Park Service, Interior

## § 51.43

from those authorized under the previous concession contract; and either

(b) The new concession contract that is to replace the previous concession contract is estimated to result in, as determined by the Director, annual gross receipts of less than \$500,000 in the first 12 months of its term; or

(c) The new concession contract is an outfitter and guide concession contract as described in this part.

### **§ 51.38 How will the Director determine that a concession contract is an outfitter and guide concession contract?**

The Director will determine that a concession contract is an outfitter and guide concession contract if the Director determines that:

(a) The concession contract solely authorizes or requires (except for park area access purposes) the conduct of specialized outdoor recreation guide services in the backcountry of a park area; and

(b) The conduct of operations under the concession contract requires employment of specially trained and experienced guides to accompany park visitors who otherwise may not have the skills and equipment to engage in the activity and to provide a safe and enjoyable experience for these visitors.

### **§ 51.39 What are some examples of outfitter and guide concession contracts?**

Outfitter and guide concession contracts may include, but are not limited to, concession contracts which solely authorize or require the guided conduct of river running, hunting (where otherwise lawful in a park area), fishing, horseback, camping, and mountaineering activities in the backcountry of a park area.

### **§ 51.40 What are some factors to be considered in determining that outfitter and guide operations are conducted in the backcountry?**

Determinations as to whether outfitter and guide operations are conducted in the backcountry of a park area will be made on a park-by-park basis, taking into account the park area's particular geographic circumstances. Factors that generally may indicate that outfitter and guide

operations are conducted in the backcountry of a park area include, without limitation, the fact that:

(a) The operations occur in areas remote from roads and developed areas;

(b) The operations are conducted within a designated natural area of a park area;

(c) The operations occur in areas where search and rescue support is not readily available; and

(d) All or a substantial portion of the operations occur in designated or proposed wilderness areas.

[65 FR 20668, Apr. 17, 2000; 65 FR 54155, Sept. 7, 2000]

### **§ 51.41 If the concession contract grants a compensable interest in real property improvements, will the Director find that the concession contract is an outfitter and guide concession contract?**

The Director will find that a concession contract is not an outfitter and guide contract if the contract grants any compensable interest in real property improvements on lands owned by the United States within a park area.

### **§ 51.42 Are there exceptions to this compensable interest prohibition?**

Two exceptions to this compensable interest prohibition exist:

(a) The prohibition will not apply to real property improvements lawfully constructed by a concessioner with the written approval of the Director in accordance with the express terms of a 1965 Act concession contract; and

(b) The prohibition will not apply to real property improvements constructed and owned in fee simple by a concessioner or owned in fee simple by a concessioner's predecessor before the land on which they were constructed was included within the boundaries of the applicable park area.

### **§ 51.43 Who will make the determination that a concession contract is an outfitter and guide contract?**

Only a Deputy Director or an Associate Director will make the determination that a concession contract is or is not an outfitter and guide contract.